

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1482

Introduced by Senator Romero

February 23, 2006

An act to amend Section 7501 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

SB 1482, as amended, Romero. Child custody.

Existing law provides that a parent who is entitled to the custody of a child has a right to change the residence of the child, subject to the power of the court to restrain a removal that would prejudice the rights or welfare of the child.

~~This bill would authorize a court to deny a noncustodial parent's request to modify custody based on a change of residence of the child, without holding an evidentiary hearing, if the noncustodial parent's allegation or showing of detriment to the child is not substantial in light of all the circumstances presented in the case, or is otherwise legally insufficient to warrant relief~~ *instead provide that a parent entitled to the custody of a child has a presumptive right affecting the burden of proof to change the residence of the child. The bill would require a parent seeking to restrain a child's relocation to make a prima facie showing, setting forth specific facts, as to the harm the child will suffer as a result of the relocation which necessitates a change in the child's custody. The bill would also provide that this standard would apply regardless of how the existing custody order was established.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 7501 of the Family Code is amended to read:

7501. (a) A parent entitled to the custody of a child has a ~~right~~ *presumptive right affecting the burden of proof* to change the residence of the child, subject to the power of the court to restrain a ~~removal~~ *residence relocation* that would prejudice the rights or welfare of the child.

~~(b) A trial court may deny a noncustodial parent's request to modify custody based on a change of residence of the child without holding an evidentiary hearing, if the noncustodial parent's allegation or showing of detriment to the child is not substantial in light of all the circumstances presented in the case, or is otherwise legally insufficient to warrant relief.~~

~~(e)~~

(b) It is the intent of the Legislature to affirm the decision in *In re Marriage of Burgess* (1996) 13 Cal.4th 25, and to declare that ruling to be the public policy and law of this state.

(c) *A parent seeking to restrain a child's relocation shall make a prima facie showing, setting forth specific facts, as to the harm the child will suffer as a result of the relocation which necessitates a change in the child's custody. Normal incidences of moving, including, but not limited to, increased distance from the noncustodial parent, change of schools or neighborhoods, or alteration of the custody or visitation schedule, are insufficient in and of themselves to establish detriment or prejudice, and shall not be the basis for an evidentiary hearing regarding the relocation.*

(d) *The provisions of subdivision (c) apply whether the existing custody arrangement was established by court order, stipulation, de facto arrangement, or otherwise.*